

Staff Summary Report



Hearing Officer Hearing Date: May 6, 2008

Agenda Item Number: 4

SUBJECT: This is a public hearing for a request by **URBAN CAFE (PL080094)** located at 1212 East Apache Boulevard, Suite No. 103, for one (1) use permit.

DOCUMENT NAME: 20080506dsac01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by **SUNSTOP PLAZA - URBAN CAFE (PL080094)** (Mohamed Elghalayini, applicant; Royal West Investments LLC, property owner) located at 1212 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District for:

ZUP08063 Use permit to allow a hookah lounge/tobacco retailer.

PREPARED BY: Alan Como, Planner II (480-350-8439)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

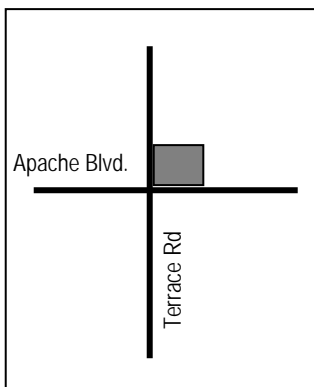
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LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval subject to Conditions 1-10

ADDITIONAL INFO: The applicant is requesting a use permit to allow a Hookah lounge/tobacco retailer located at 1212 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District. No public input has been received to date. Staff supports the request for a use permit as it meets the criteria for a use permit in the Zoning and Development Code



PAGES:

1. List of Attachments
2. Comments
3. Reasons for Approval; Conditions of Approval; History & Facts/Description
4. Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent
4. Zoning Administrator's Opinion Letter
5. Site plan
6. Floor Plan
7. Staff Photograph(s)

COMMENTS:

The applicant Urban Café is requesting a use permit to allow a hookah lounge/tobacco retailer located at 1212 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District. Urban Café occupies approximately 1,257 square feet of space and plans to sell snacks and beverages in addition to hookah and related products. Hours of operation will be from 6pm to 2am, seven (7) days a week; they will employ 2 full time employees. Peak hours for hookah tend to be after dinner into the late evening. No public input has been received on this request. Staff supports the request for a use permit to allow a hookah lounge.

City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, disallow a tobacco retailer from locating within 1,320 feet of a school. Thus, Urban Café requested a Zoning Administrator's opinion to determine if they would be permitted to submit a use permit request to operate a hookah lounge/tobacco retail establishment. The applicant provided a copy of their "Tobacco Distributors License" dated 2005, from the State of Arizona, as evidence that they had been operating as a hookah lounge prior to the separation requirement. In the Zoning Administrator's letter, Planning Director Lisa Collins opined that Urban Café had been operating as a hookah lounge prior to the separation requirement taking effect; therefore permitting them to submit a use permit request to operate a hookah lounge/tobacco retail establishment.

Use Permit

The Zoning and Development Code requires a use permit for a hookah lounge/tobacco retailer in the CSS, Commercial Shopping and Services District.

Evaluating the use permit, the proposal appears to pass the use permit test listed below:

- a) Any significant increase in vehicular or pedestrian traffic in adjacent areas;
 - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
- b) Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - This is a hookah lounge and will generate smoke; however all hookah smoking shall be contained within the establishment. Therefore this use should not adversely impact neighboring businesses with the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare.
- c) Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
 - The proposed development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.
- d) Compatibility with existing surrounding structures and uses;
 - The proposed use appears to be compatible with surrounding uses

Conclusion

Staff recommends approval of the use permit subject to conditions.

**REASON(S) FOR
APPROVAL:**

1. The business is a general commercial use, and is compatible with the other businesses on the property and within the area.
2. No apparent nuisance resulting from noise, smoke, odor, dust, vibration, or glare.
3. No apparent hazards to persons or property from possible explosion, contamination, fire or flood.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

**CONDITION(S)
OF APPROVAL:**

1. The use permit is valid for Urban Café and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
10. A security plan is required for this establishment due to the late hours of operation in conjunction with tobacco retail. Contact Tempe Police Department Crime Prevention Unit (480-858-6333).

HISTORY & FACTS:

April 3, 2008

DSM08014: Zoning Administrators Decision allowing URBAN CAFE hookah lounge to apply for a use permit, as a result of operating as a tobacco retailer prior to Tempe's 1,320 foot separation requirement from a school.

April 15, 2008

ZUP08045: Use permit approved for Memo's Café to allow a hookah lounge/tobacco retailer located at 1845 East Broadway Road, Suite 9 in the CSS, Commercial Shopping & Services District.

DESCRIPTION:

Owner – Royal West Investments LLC
Applicant – Mohamed Elghalayini
Existing Zoning – CSS, Commercial Shopping and Services District
Total Building Area – 10,707 s.f.
Tenant Area – 1,257 s.f.
Parking Required – 4 spaces
Parking Provided – approximately 57 spaces in shopping plaza

**ZONING AND
DEVELOPMENT**

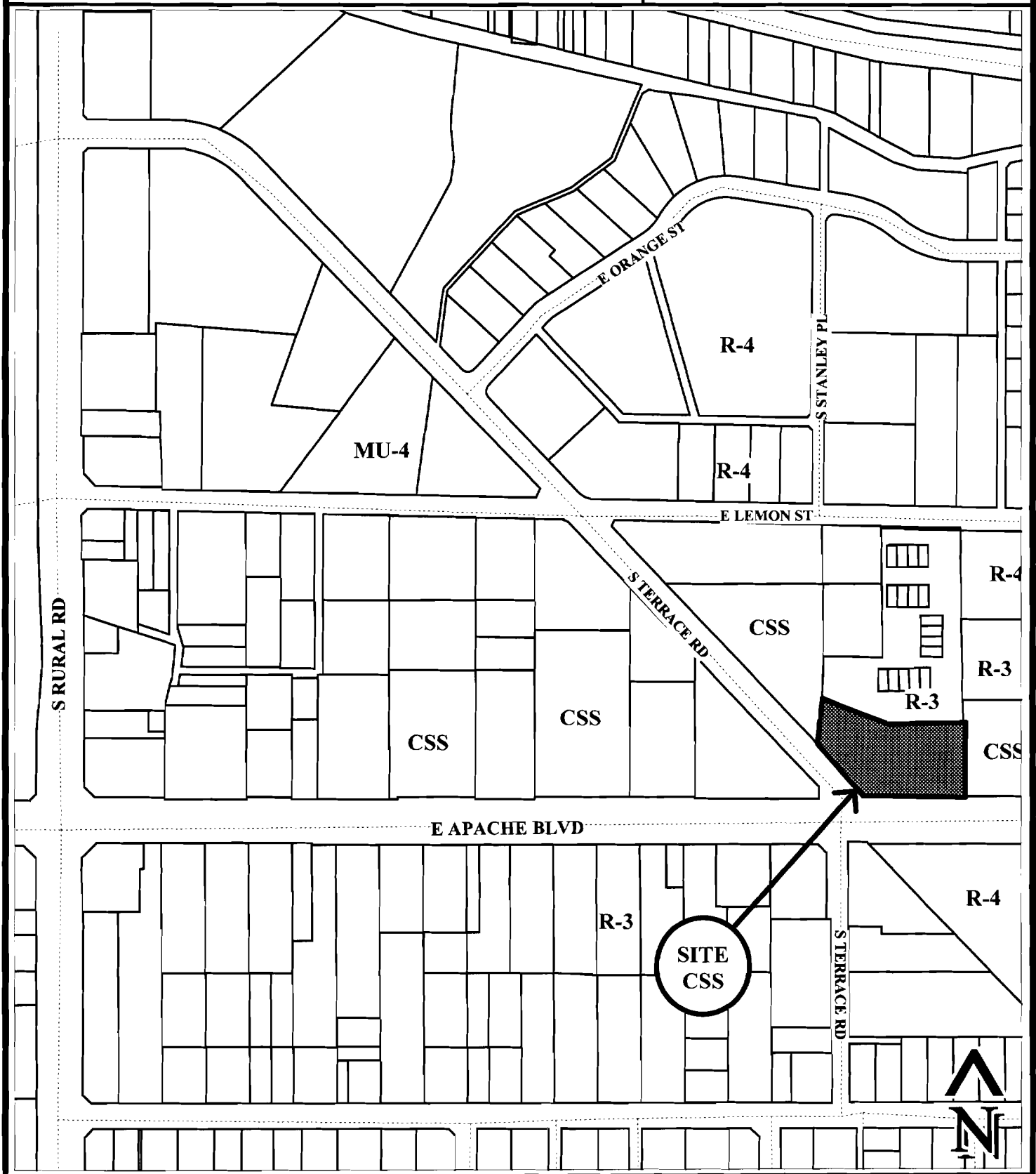
CODE REFERENCE:

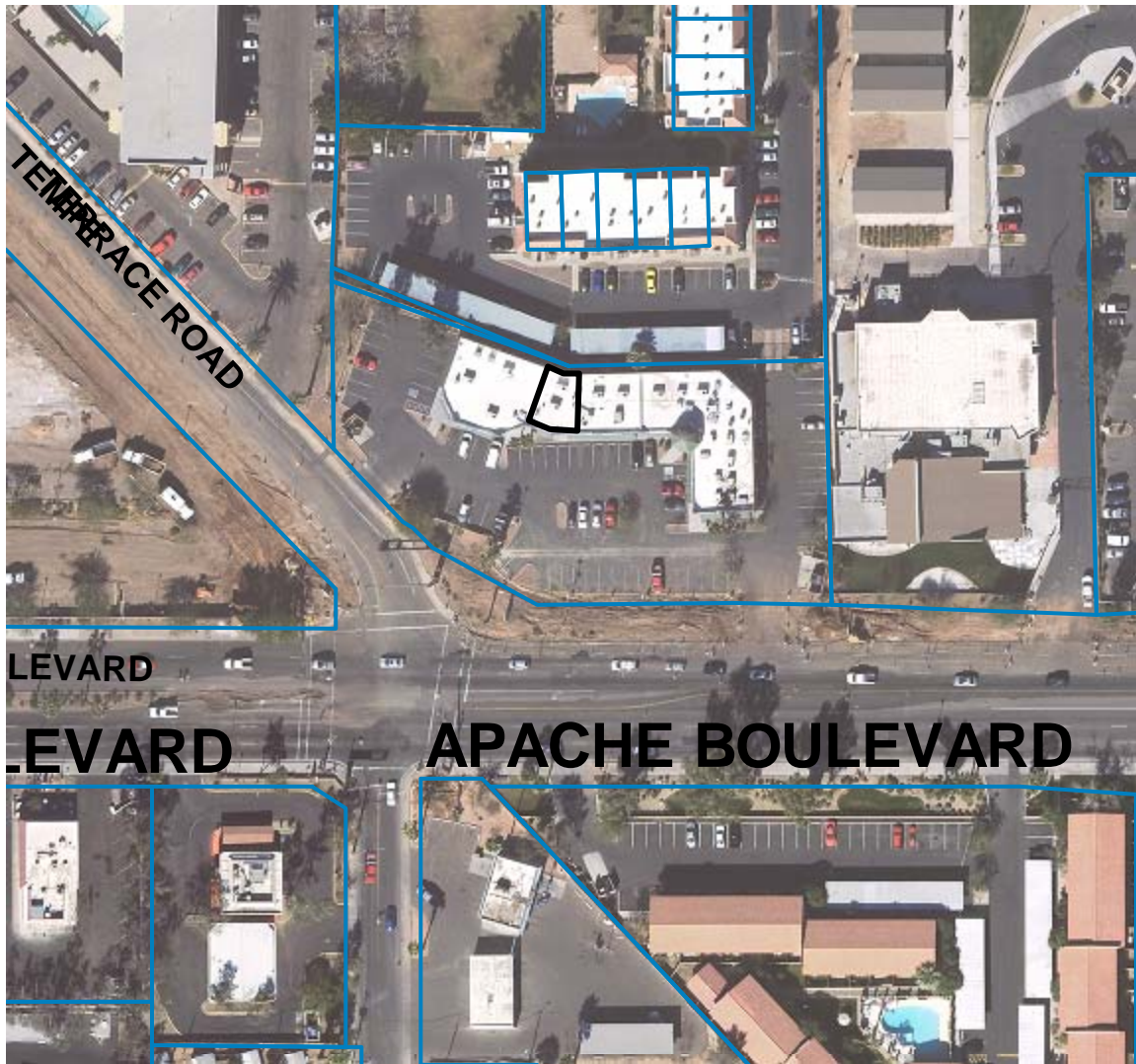
Part 3, Chapter 2, Section 3-202, Table 3-202A – Permitted Land Uses in CSS, Commercial and Shopping and Services District.

Part 6, Chapter 3, Section 6-308 – Use Permit

SUNSTOP PLAZA - URBAN CAFE

PL080094





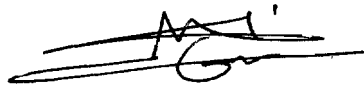
SUNSTOP PLAZA - URBAN CAFE (PL080094)

Letter Of Intent

I, Mohamed Elghalayini, the owner of Urban Cafe has been operating this business since 2004. I currently do not have or serve open containers or food in my business. My business consists of 2 employees. We are open for business from 6:00 p.m. to 2:00 a.m. During our hours of operation, we serve bottled drinks and hookah with flavored tobaccos. We also sell hookah and tobacco. This establishment is my only source of income for my family and I.

Thank You,

Mohamed Elghalayini

A handwritten signature in black ink, appearing to be 'ME' followed by a stylized flourish, written over a horizontal line.

Development Services
Department

480-350-8331

April 3, 2008

Mr. Mohamed Elghalayini
Urban Cafe
1212 East Apache Boulevard, Suite 103
Tempe, Arizona 85281

RE: **URBAN CAFE – HOOKAH LOUNGE**
1212 East Apache Boulevard, Suite 103
PL080094 / DS080269 / DSM08014

FILE COPY

Dear Mr. Elghalayini:

I have reviewed your request for a Zoning Administrator's opinion as whether an application for a use permit to allow a hookah lounge at the Urban Cafe located at 1212 East Apache Boulevard, Suite 103 in the CSS, Commercial Shopping and Services District can be accepted. Given the supporting evidence that shows the hookah use existed prior to the separation requirement becoming effective, you are able to apply for a use permit to allow a Hookah Lounge/Tobacco Retailer at this location.

The City of Tempe Zoning and Development Code, Part 3, Land Use, Section 3-423 states:

'Tobacco Retailers shall not be located on a lot within 1,320 feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school, which provides elementary or secondary education. Instructional or vocational schools are excluded from the separation agreement.'

Your check number 1584 in the amount of \$320.00 has been applied toward a use permit fee of \$1065.00. Please submit the balance of \$745.00 along with the remaining project submittal items when applying for your use permit (i.e. 300 ft. radius map, typed mail labels, site plan, floor plan, letter of intent and signed letter of approval from the property owner).

If you need additional information or assistance, please contact Alan Como, staff planner, at 480-350-8439.

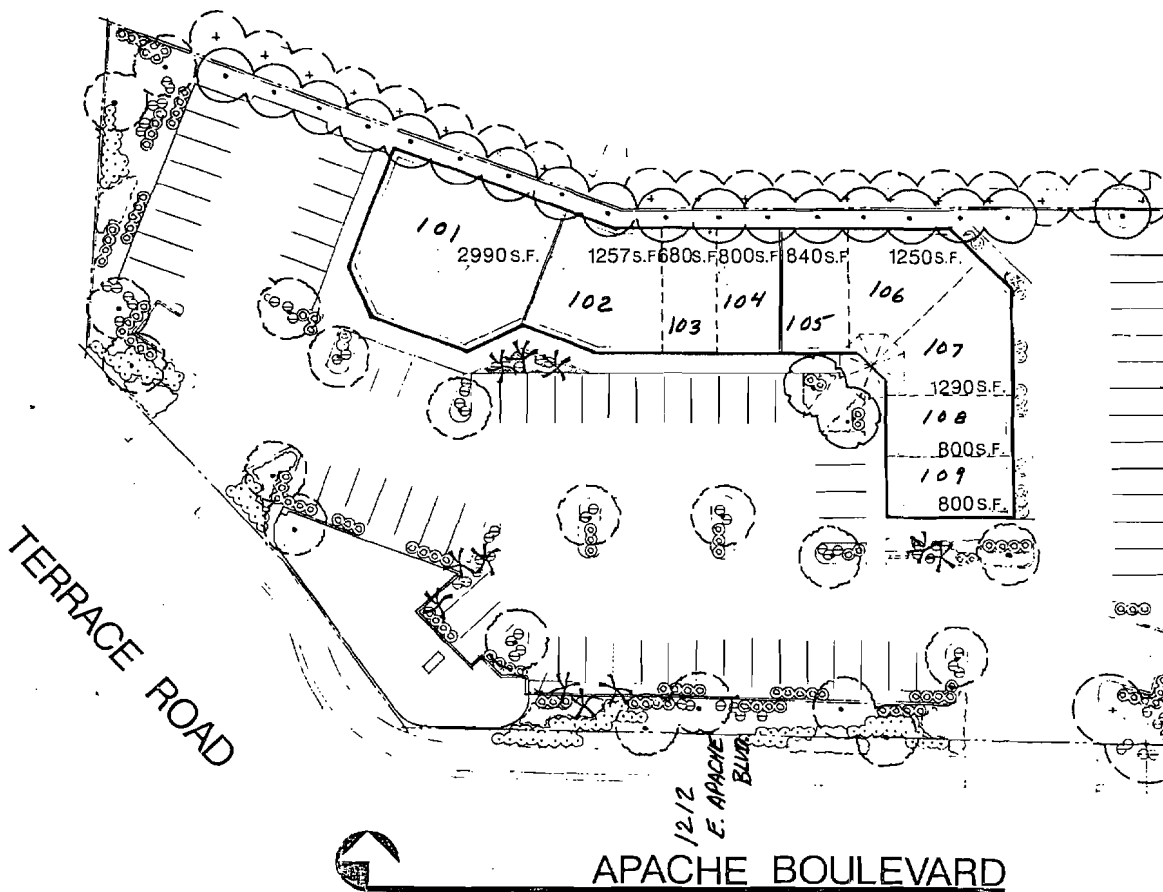
Sincerely,



Lisa Collins
Planning Director

LC/dm

cc: Kay Savard/COT Tax & Licensing
Dean Miller/COT Commercial Code Department
File



SUITES ASSIGNED
 B-5-88
 JPL Winkler

DIZCATTY CORNER

APACHE & TERRACE
 1212 EAST APACHE
 TEMPE, ARIZONA

Porter, Pang
 Deardorff &
 Weymiller

ARCHITECTS INC.

Job No:
 8512-15 C

Date:

Drawn By:

Checked By:

Revisions:

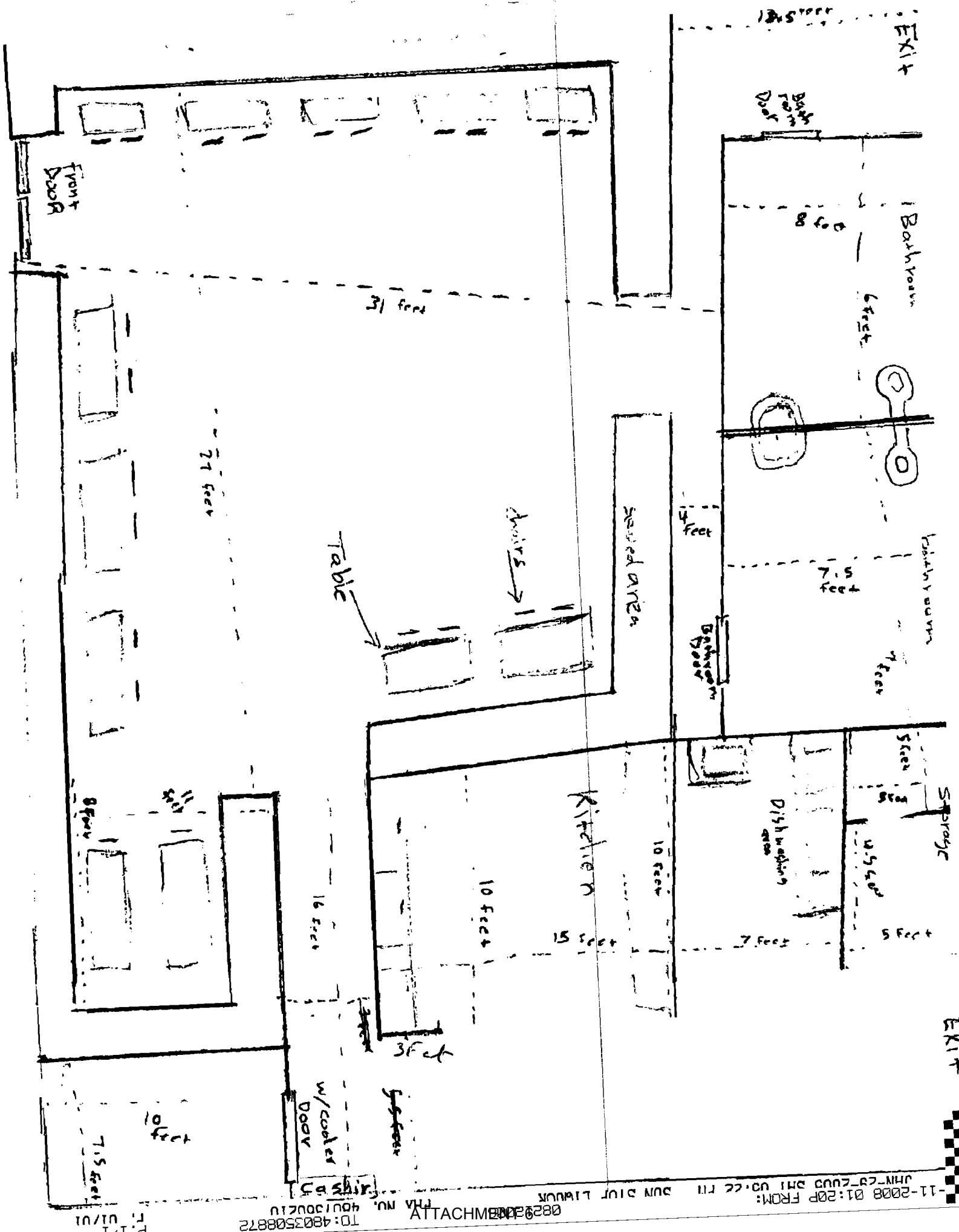
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NW 23 T1N

4700 s. McClintock, suite 120
 Glendale, az 91204 (602) 907-0700

1212 E Apache Blvd





SUNSTOP PLAZA – URBAN CAFE

1212 E APACHE BLVD., SUITE NO. 103

PL080094

FRONT OF BUSINESS